

78B-9-401.5 Definitions.

As used in this part:

- (1) "Bona fide and compelling issue of factual innocence" means that the newly discovered material evidence presented by the petitioner, if credible, would clearly establish the factual innocence of the petitioner.
- (2) "Factual innocence" or "factually innocent" means a person did not:
 - (a) engage in the conduct for which the person was convicted;
 - (b) engage in conduct relating to any lesser included offenses of the crime for which the person was convicted; or
 - (c) commit any other felony arising out of or reasonably connected to the facts supporting the indictment or information upon which the person was convicted.
- (3) "Newly discovered material evidence" means evidence that was not available to the petitioner at trial or during the resolution on the merits by the trial court of any motion to withdraw a guilty plea or motion for new trial and which is relevant to the determination of the issue of factual innocence, and may also include:
 - (a) evidence which was discovered prior to or in the course of any appeal or postconviction proceedings that served in whole or in part as the basis for vacatur or reversal of the conviction of petitioner; or
 - (b) evidence that supports the claims within a petition filed under Part 1, General Provisions, which is pending at the time of the court's determination of factual innocence.
- (4) "Period of incarceration" means any sentence of imprisonment, including jail, which was served after judgement of conviction.

Enacted by Chapter 153, 2010 General Session